

REMARKS/ARGUMENTS

Reconsideration of this application, in view of the foregoing amendment and the following remarks and arguments, is respectfully requested.

Claims 34-62 are currently pending in this application. By the foregoing amendment independent Claims 1, 47 and 56 have been revised. Accordingly, Claims 34-62 remain in this application for consideration and allowance.

In the October 6, 2008 Office Action, Claims 34-42 and 44-62 were finally rejected under 35 USC §102(e) as being anticipated by U.S. Patent 5,681,317 to Caldarise, and Claim 43 was finally rejected under 35 USC §103(a) as being unpatentable over Caldarise in view of U.S. Patent 5,837,752 to Shastri et al. These rejections are respectfully traversed for the following reasons.

Turning first to the anticipation rejection of Claims 34-42 and 44-62, via amended independent Claims 34, 47 and 56 each of applicants' Claims 34-42 and 44-62 now recites, in one manner or another, that a specified prosthesis has a second (inner) bone filler material disposed within a cavity of a first (outer) bone filler material, with an **end surface** of the second bone filler material being **covered** by an **end portion** of the first bone filler material.

Specifically, Claims 34-42 and 44-46 recite that **a distally facing end surface of the second bone filler material is covered by the distal end portion of the first bone filler material**; Claims 47-55 recite that **the second layer having an end surface portion facing and covered by the closed end portion of the first layer.**; and Claims 56-62 recite that **the second layer having an end surface portion facing and covered by the closed end portion of the first layer.**

Caldarise clearly does not disclose a bone filler material structure in which a second (inner) bone filler material is disposed within a cavity in a first (outer) bone filler material, with the second bone filler material having an end surface covered by an end portion of the first bone filler material.

As can readily be discerned from FIG. 2 of Caldarise, cement material exiting the outer annular distal opening 20 would cover only the outer side periphery of cement material exiting the inner distal opening 19 - the distal end surface of the exiting inner cement material would not be covered by the exiting outer cement material. On page 3 of the October 6, 2008 Office Action, the Examiner acknowledges that the end portions of the inner layer of the two layer cement extrusion exiting the Caldarise cement delivery structure 13,14 would not be enclosed by the outer layer of the extrusion.

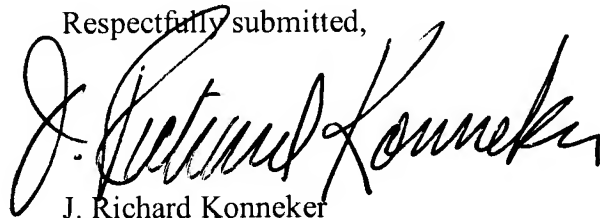
It is thus respectfully submitted that none of applicants' Claims 34-42 and 44-62 is anticipated by U.S. Patent 5,681,317 to Caldarise.

Turning now to the obviousness rejection of Claim 43, which depends from independent Claim 34, the previously discussed deficiencies in Caldarise with respect to Claim 34 are in no manner cured by the Shastri et al reference which has been cited by the Examiner solely for its alleged teachings with respect to forming a stent from bone cement compositions. It is thus respectfully submitted that Claim 43 is patentably distinguishable over Caldarise and Shastri et al, whether these references are considered singly or in any combination thereof.

In view of the foregoing amendment, remarks and arguments, all of the claims currently pending in this application are now seen to be in a condition for allowance. A Notice of Allowance of Claims 34-62 is therefore earnestly solicited.

The Examiner is hereby requested to telephone the undersigned attorney of record at 972/739-8612 if such would further or expedite the prosecution of the instant application.

Respectfully submitted,



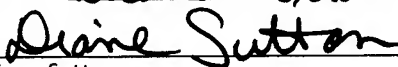
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Dated: December 8, 2008

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Client Matter No. P0031097.14
010-0010US04
41914.524

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Diane Sutton